IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9505 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UABDUL @MUNNA AZAD ANDUL JABBAR MOHMED ISMAIL

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat, passed an order dated September 21, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of

Anti-Social Activities Act, 1985, ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. The detenue was branded as "immoral traffic offender". For arriving at the satisfaction, the detaining authority took into consideration two offences registered against the detenue and statements of two anonymous witnesses. The authority exercised powers under section 9(2) of the PASA Act after recording satisfaction about the genuineness and correctness of the fear expressed by the witnesses qua the detenue and need for exercise of powers in public interest. The detaining authority considered the less drastic remedies and ultimately came to a conclusion that the detention under the PASA Act is the only efficacious remedy that can be resorted to in order to immediately prevent the detenue from pursuing his immoral traffic activities detrimental to public order.

#. The detenue challenges the order of detention on various grounds. However, Mr. Panchal, learned advocate appearing for the detenue has relied upon the ground of delay in passing the order. He submitted that the statements of the witnesses were recorded on July 22, 1999 and came to be verified by the detaining authority on 18th September, 1999 i.e. after a period of about two months' delay which has vitiated the order of detention. According to Mr. Panchal, therefore, the order may be quashed and set aside.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, in the facts of the present case, there is no dispute about the fact that the statements of the anonymous witnesses were recorded on 22nd July, 1999 by the Police Inspector, Chowk Bazar Police Station, Surat whereas they came to be verified by the detaining authority on 18th September, 1999 i.e. after a period of almost two months. There does not appear to be any involvement of the detenue during this period in any criminal activity. The detaining authority has not considered this aspect and has passed the order on the basis of this verification. There is delay of about two months in verifying the statements. While considering this, the detaining authority ought to have taken into consideration the lapse of time, which would snap causal connection. It is also not brought on record as to when was the proposal made by the sponsoring party. If it is delayed, then,

there is delay on the part of respondent - detaining authority which ought to have been considered by the detaining authority while passing the order. If the proposal is made in time and there is delay on the part of the detaining authority, then it would affect the genuineness of the urgency felt by the detaining authority for immediately preventing the detenue from pursuing his activities. In either case, it would have an adverse bearing on the impugned order of detention. The petition, therefore, deserves to be allowed by quashing the order of detention.

#. In view of the above discussion, the petition is allowed. Impugned order of detention dated September 21, 1999 is hereby quashed and set aside. The detenue - Abdul @ Munna Azad Abdul Jabbar Mohammed Ismail is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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